

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7228 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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VANMALIBHAI KESHAVLAL PATEL

Versus

LIMDI NAGAR PALIKA

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Appearance:

MR MB BUCH for Petitioner

MR YN OZA for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/04/2000

CAV JUDGEMENT

Heard the learned advocates for the respective parties.

2. The brief facts of the present writ petition reads as under :-

2.1 The petitioner was working as a Conductor with the Limbdi Nagar Palika, the respondent herein, since April 1, 1965. The service conditions of the petitioner were governed by the relevant regulations framed by the respondent-Nagar Palika. According to the said regulation, the age of superannuation of all category of employees 55 years. Since there was a long pending demand from the employees to raise the age limit of retirement from 55 to 60 years for Class-IV category and from 55 to 58 years for Class-III category and for that Union had raised demand over the question of fixing the retirement age of all the employees of the Nagar Palika and the said dispute was ultimately referred to the Industrial Tribunal being Reference (IT) No. 135 of 1980. The dispute, as referred to, was to adjudicate and decide the question as to whether the demand of the Union to increase the age of superannuation from 55 years to 60 years in case of Class-IV employees, and from 55 to 58 years in case of Class-III employees. The said reference was came to be allowed by the Industrial Tribunal vide Award dated 5th March, 1984. Under the said Award, the age of superannuation was increased from 55 years to 60 years in case of Class-IV employees, and from 55 years to 58 years in case of Class-III employees. After the date of Award, the petitioner was superannuated from services with effect from 15th March, 1984. It is contended that inspite of specific directions in the Award, fixing the age of superannuation at 60 years, the services of the petitioners were terminated with effect from 15th March, 1984. Thereafter, the petitioner made a request to the Limbdi Nagar Palika to continue him in service since the Award passed by the Labour Court increases the age of superannuation from that of 55 years to 60 years. The said request made by the petitioner was turned down by the Limbdi Nagarpalika. Feeling aggrieved and dissatisfied by the said decision of the Nagarpalika, the petitioner raised an industrial dispute before the Labour Court being Reference (IT) No. 774 of 1984. The said Reference came to be rejected by the Labour Court, Rajkot on 6th July, 1989. The said Award dated 6th July, 1989 is under challenge in the present writ petition.

3. In this matter, this Court [Coram : M/s. S.B Majmudar & V.H Bhairaviya, JJ.] had issued rule making it returnable on 11th Decmeber, 1989. Since then, no reply has been filed on behalf of the respondent Nagarpalika.

4. Mr. Buch, learned advocate appearing for the petitioner submitted that the Industrial Tribunal in its Award made in Reference (IT) No. 135 of 1980 in

paragraph no. 24 has observed that, '...in view of the above, I fix age of retirement of the workmen in the employment of Limbdi Nagarpalika other than Safai Kamdars and Class-IV employees, as on completion of 58 years of age and that of class-IV employees on completion of 60 years of age. The safai kamdars will be governed by the terms of the award in Reference (IT) No. 160 of 1969.' The said Award made by the Industrial Tribunal was pronounced on 5th March, 1984 and was published on 26th March, 1984. According to the learned advocate, petitioner is entitled to the benefit of the said award as he was an employee working in Class-IV category and that fact has not been disputed by the respondent by filing counter. It is contended that petitioner retired from service after completion of 55 years on 16th March, 1984 and according to Mr. Buch, on the date of the Award dated 5th March, 1984, the petitioner was entitled to get benefit of upper age of superannuation i.e., 60 years. Therefore, an industrial dispute was raised by the petitioner before the Labour Court, Rajkot being Reference No. 774 of 1984 wherein the petitioner workman was examined vide Exh. 12 and on behalf of the respondent, one Prabhudas Nathalal was examined vide Exh. 18 and the Chief Officer was also examined vide Exh. 26. Before the Labour Court, it was pointed out that on 4th April, 1984, the application was given to the respondent Nagarpalika to continue him in service pursuant to the Award made by the Industrial Tribunal. The date of birth of petitioner being 17th March, 1929, he completed 55 years as on 16th March, 1984. The Labour Court, Rajkot after considering the submissions made by both the parties had come to the conclusion that under Industrial Law the Award is not implemented from the date on which it is pronounced but it requires publication under Section 17 of the Industrial Disputes Act, 1947 and after its publication, a one month's period is required for its implementation, and therefore, the operation of the award takes effect only after completion of 30 days, as per the provisions of Section 7A of the I.D Act. Therefore, the Labour Court has come to the conclusion that the said Award is required to be implemented with effect from 25th April, 1984 and since prior to that the petitioner has been retired from service, so the petitioner is not entitled to the benefit of the said Award passed by the Industrial Tribunal in Reference No. 135 of 1980, and as a result thereto, the said Reference was rejected by the Labour Court, Rajkot on 6th July, 1989.

5. Learned advocate Mr. Buch has submitted that the Labour Court, Rajkot has committed gross error in interpreting Section 17 & 17A of the Industrial Disputes

Act, 1947 and not understood the question and difference between the enforceability of Award and effect of Award passed by the Industrial Tribunal. Mr. Buch further submitted that the award passed by the Industrial Tribunal under Section 17 is required to be published and after its publication, the Award will come into operation after completion of 30 days. For this provision, Mr. Buch has not disputed the legal situation but the submission of Mr. Buch is that the Award is required to be enforced after completion of 30 days from the date of its publication but it has nothing to do with the effective date of its implementation. In the present case, the question is that from which date the Award has become effective and for that the Labour Court has not given any satisfactory answer and not decided the said question, which amounts to misconception of law, and therefore, the said Award is required to be set-aside and petitioner is entitled to the benefit of the said Award made by the Industrial Tribunal.

6. Learned advocate Mr. Shukla appearing on behalf of the respondent-Nagarpalika has pointed out that the Award passed by the Labour Court, Rajkot is correct, legal and valid and no interference is required at the hands of this Court. Mr. Shukla submitted that the Award passed by the Industrial Tribunal is dated 5th March, 1984 and it came to be published on 26th March, 1984 and after the date of publication of the Award thirty days are required to be given for implementation and prior to that period, on 16th March, 1984, the petitioner retired from service and therefore, the petitioner is not entitled to the benefit of the said Award.

7. I have considered the submissions of both the learned counsel. The question is Award has come into effect from which date for which Section 17 and 17A are not relevant because it relates to enforceability of the Award. The Award can only be enforced after 30 days from the date of its publication. Section 17 provides that every award passed by the Labour Court or Industrial Tribunal shall within a period of 30 days from the date of its receipt by the Appropriate Government be published in such a manner as the Appropriate Government thinks fit. Section 17, Sub-section (ii) provides that subject to the provisions of Section 17-A, the Award published under sub-Section 1 shall be final and shall not be called in question by any Court in any manner whatsoever. Section 17-A provides that Award shall become enforceable [emphasis supplied] on the expiry of 30 days from the date of its publication under Section 17, therefore,

there is a vast difference between enforceability of the Award and effect of the Award. The Labour Court, Rajkot has not considered the effect of the Award that from which date it applies. It can only be enforced after completion of 30 days from the date of publication for that there may not be any dispute but it should be having effect from the date of demand or reference and not from the date of completion of 30 days from the date of its publication. Therefore, the Labour Court has not understood the difference between enforceability and effect of the award and rejected the claim of the petitioner. It is also required to be examined in light of the provision of Section 18 (ii)(d) wherein any Award passed by the Labour Court or the Tribunal which has become enforceable shall be binding to all parties referred to in Clause-A (a) or (b) is composed of workmen, all persons who were employed in the establishment or the part of the establishment, as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently got employed in that establishment. Therefore, considering these provisions, the Award is binding to the workmen who were employed in the establishment or part of the establishment; as the case may be, to which the dispute relates on the date of the dispute and also binding to the subsequently employed persons in that establishment. Therefore, considering this aspect, on the date of the demand, the award must become effective which governs the service conditions between employer and the employees.

8. In support of his arguments, learned advocate Mr. Buch has relied upon one decision of this Court in the matter of F.M Kolia v. G.S Barot, reported in 22 GLR p-700. In the said decision, the Division Bench of this Court has taken a view that ordinarily the Award of the Industrial Court should be made effective from the date of reference and the term 'ordinarily' extends unless there are any special reasons. Thus, the Award should ordinarily be made effect from the date of Reference. This Court has observed that, '...the question as regards the date from which the Award should be made effective is within the discretion of the Industrial Court. But, 'ordinarily' it should be made effective from the date of the Reference. 'Ordinarily' means unless there are special reasons pertaining either (i) to the dispute concerned; or (ii) to the case concerned which warrant a departure on rational ground or grounds of expediency. And the proposition that it should be enforced 'ordinarily' with effect atleast from the date of reference is buttressed by extremely valid, cogent, convincing and rational grounds which cannot be brushed

aside. Merely because some delay cannot be avoided in any event and the formal decision can be taken only after the time lag of a couple of months or a couple of years, it does not mean that the demand was not a just demand. It does not mean that the demand was not a just demand on the date of reference. The injustice which was always there could be ascertained only at a later date because of limitations of time and procedure. Injustice which was inherent and patent was discovered and became manifest later, would it not then be just and proper to make the award in so far as the demand to the workers is considered to be just, effective atleast from the date of Reference ? If demand was just, it was just from the date on which the Reference was made, not from the date of discovery that it was just or the date of pronouncement of the Award. That is the basis for the proposition that the award must 'ordinarily' be made effective from the date of reference, that is to say, unless there are special reasons for not doing so. The Industrial Tribunal makes its pronouncement in favour of the workers only when the Court is satisfied about the legitimacy and justness of the demand and considers it expedient in the interest of industrial peace. And for the sake of doing justice to the workers it directs the employer to implement the Award on that ground. In an ideal state of affairs, the Court would be expected to make its pronouncement on the very day the reference is received. But in reality some time is bound to elapse before the award can be rendered. Statements have to be filed, evidence has to be recorded, arguments have to be heard and the award can be rendered only thereafter. But why should the inevitable time lag in disposing of the reference occasion injustice to the workers ? If the Industrial Court had reached the same conclusion on the date on which the reference was made, assuming that it was able to dispose of the reference on the material placed before it by the respective parties on that very day, the justness of the demand of the workers would have become manifest on that very day. Merely because some delay cannot be avoided in any event, and the formal decision can be taken only after a time lag of a couple of months or a couple of years, it does not mean that the demand was not a just demand on the date of reference.

9. In view of the above observations made by the Division Bench of this Court, in the present case, the Industrial Tribunal while deciding the reference No. (IT) 135 of 1980 wherein the date of reference is 29th February, 1980 and decision has been taken on 5th March, 1984. It is true that the Industrial Tribunal has not given any date for its implementation, however, that does

not mean that the Award which has been made on 5th March, 1984 comes into effect only after the completion of 30 days from the date of its publication. When no date has been given for its implementation, then the Award ordinarily becomes effective from the date on which the Reference was made i.e., 29th February, 1980 in the present case. In view of this finding, according to my opinion, this aspect has not been considered by the Labour Court, Rajkot while passing the Award dated 6th July, 1989 and therefore, the Labour Court has committed gross error which requires interference at the hands of this Court under Article 226 & 227 of the Constitution of India.

10. In view of the above discussion, the Award passed by the Labour Court, Rajkot in Reference (LCR) No. 774 of 1984 dated 6th July, 1989 is hereby quashed and set-aside. The petitioner is entitle to the benefit of Award made by the Industrial Tribunal, Rajkot in Reference (IT) No. 135 of 1980 dated 5th March, 1984 and accordingly, petitioner is deemed to be continued in service till he reaches the age of 60 years [according to his category of employment ie., class-IV category]. The respondent-Limbdi Nagarpalika is directed to pay full wages to the petitioner from the date of his retirement ie., 16th March, 1984 till the date of his completing 60 years of age. The respondent-Nagarpalika is also directed to treat the petitioner in service, all throughout, for all purposes and he be given all the benefits as if he was in service from 55 years of his age to 60 years; including pay revision, etc.. The said benefits shall be given to the petitioner-workman within a period of three months from the date of receipt of the writ of this order by the respondent Nagarpalika.

11. Accordingly, this petition succeeds. Rule is made absolute. There shall be no order as to costs. Registry is directed to send the writ of this order forthwith.

[H.K Rathod, J.]

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